

CENTER FOR DISABILITY ACCESS  
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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

**Raul Uriarte-Limon,**

Plaintiff,

v.

**Now Properties LLC**, a California  
Limited Liability Company;  
**Powerstride Battery Co., Inc.**, a  
California Corporation; and Does 1-  
10,

Defendants.

**Case No.**

**Complaint For Damages And  
Injunctive Relief For Violations  
Of:** American's With Disabilities  
Act; Unruh Civil Rights Act

Plaintiff Raul Uriarte-Limon complains of Now Properties LLC, a California Limited Liability Company; Powerstride Battery Co., Inc., a California Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is a paraplegic who uses a wheelchair.
2. Defendant Now Properties LLC owned the real property located at or about 10532 Norwalk Blvd., Santa Fe Springs, California, in November 2018.

1       3. Defendant Now Properties LLC owns the real property located at or  
2 about 10532 Norwalk Blvd., Santa Fe Springs, California, currently.

3       4. Defendant Powerstride Battery Co., Inc. owned Powerstride Battery  
4 located at or about 10532 Norwalk Blvd., Santa Fe Springs, California, in  
5 November 2018.

6       5. Defendant Powerstride Battery Co., Inc. owns Powerstride Battery  
7 located at or about 10532 Norwalk Blvd., Santa Fe Springs, California,  
8 currently.

9       6. Plaintiff does not know the true names of Defendants, their business  
10 capacities, their ownership connection to the property and business, or their  
11 relative responsibilities in causing the access violations herein complained of,  
12 and alleges a joint venture and common enterprise by all such Defendants.  
13 Plaintiff is informed and believes that each of the Defendants herein,  
14 including Does 1 through 10, inclusive, is responsible in some capacity for the  
15 events herein alleged, or is a necessary party for obtaining appropriate relief.  
16 Plaintiff will seek leave to amend when the true names, capacities,  
17 connections, and responsibilities of the Defendants and Does 1 through 10,  
18 inclusive, are ascertained.

19  
20       **JURISDICTION & VENUE:**

21       7. The Court has subject matter jurisdiction over the action pursuant to 28  
22 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
23 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

24       8. Pursuant to supplemental jurisdiction, an attendant and related cause  
25 of action, arising from the same nucleus of operative facts and arising out of  
26 the same transactions, is also brought under California's Unruh Civil Rights  
27 Act, which act expressly incorporates the Americans with Disabilities Act.

28       9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is

1 founded on the fact that the real property which is the subject of this action is  
2 located in this district and that Plaintiff's cause of action arose in this district.

3  
4 **FACTUAL ALLEGATIONS:**

5 10. Plaintiff went to Powerstride Battery in November 2018.

6 11. Powerstride Battery is a facility open to the public, a place of public  
7 accommodation, and a business establishment.

8 12. Parking spaces are one of the facilities, privileges, and advantages  
9 offered by Defendants to patrons of Powerstride Battery.

10 13. Although there were parking spaces marked and reserved for persons  
11 with disabilities on the property, those parking spaces did not serve  
12 Powerstride Battery. There were no accessible routes from those parking  
13 spaces to Powerstride Battery.

14 14. If plaintiff used the parking spaces marked and reserved for persons  
15 with disabilities on the property, he would have to travel behind parked cars as  
16 well as travel with cars in the vehicular drive path to make it back to  
17 Powerstride Battery. This is not accessible for plaintiff.

18 15. Additionally, one of the parking spaces had cross slopes and running  
19 slopes that are above 2.1%.

20 16. Currently, there is no accessible route from the van parking spaces on  
21 the property that leads back to Powerstride Battery.

22 17. Additionally, there was an insufficient number of parking spaces  
23 marked and reserved for persons with disabilities. There were approximately  
24 81 parking spaces in the parking lot but only three spaces were reserved for  
25 persons with disabilities. There should have been four parking spaces marked  
26 and reserved for persons with disabilities.

27 18. Transaction counters are another one of the facilities, privileges, and  
28 advantages offered by Defendants to patrons of Powerstride Battery.

1        19. The transaction counter is 42 inches in height. There is no lowered, 36  
2 inch portion of the transaction counter for use by persons in wheelchairs.

3        20. Defendants have failed to maintain in operable working condition those  
4 features of facilities and equipment that are required to be readily accessible to  
5 and usable by persons with disabilities at the Subject Property.

6        21. Plaintiff personally encountered these barriers.

7        22. This inaccessible facility denied the plaintiff full and equal access and  
8 caused him difficulty, discomfort, or embarrassment.

9        23. The defendants have failed to maintain in working and useable  
10 conditions those features required to provide ready access to persons with  
11 disabilities.

12       24. The barriers identified above are easily removed without much  
13 difficulty or expense. They are the types of barriers identified by the  
14 Department of Justice as presumably readily achievable to remove and, in fact,  
15 these barriers are readily achievable to remove. Moreover, there are numerous  
16 alternative accommodations that could be made to provide a greater level of  
17 access if complete removal were not achievable.

18       25. A common barrier removal project is modifying transaction counters to  
19 make a portion of the counter accessible. This is a simple construction task,  
20 well within the capabilities of any general contractor. The task can be  
21 completed easily and for a modest price.

22       26. Plaintiff will return to Powerstride Battery to avail himself of its goods  
23 or services and to determine compliance with the disability access laws. He is  
24 currently deterred from doing so because of his knowledge of the existing  
25 barriers. If the barriers are not removed, the plaintiff will face unlawful and  
26 discriminatory barriers again.

27       27. Given the obvious and blatant nature of the barriers and violations  
28 alleged herein, the plaintiff alleges, on information and belief, that there are

1 other violations and barriers on the site that relate to his disability. Plaintiff will  
 2 amend the complaint, to provide proper notice regarding the scope of this  
 3 lawsuit, once he conducts a site inspection. However, please be on notice that  
 4 the plaintiff seeks to have all barriers related to his disability remedied. See  
 5 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
 6 encounters one barrier at a site, he can sue to have all barriers that relate to his  
 7 disability removed regardless of whether he personally encountered them).

8  
 9 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
 10 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
 11 Defendants.) (42 U.S.C. section 12101, et seq.)

12 28. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
 13 again herein, the allegations contained in all prior paragraphs of this  
 14 complaint.

15 29. Under the ADA, it is an act of discrimination to fail to ensure that the  
 16 privileges, advantages, accommodations, facilities, goods and services of any  
 17 place of public accommodation is offered on a full and equal basis by anyone  
 18 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 19 § 12182(a). Discrimination is defined, inter alia, as follows:

- 20 a. A failure to make reasonable modifications in policies, practices,  
 21 or procedures, when such modifications are necessary to afford  
 22 goods, services, facilities, privileges, advantages, or  
 23 accommodations to individuals with disabilities, unless the  
 24 accommodation would work a fundamental alteration of those  
 25 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 26 b. A failure to remove architectural barriers where such removal is  
 27 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
 28 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,

Appendix “D.”

- c. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities. 42 U.S.C. § 12183(a)(2).

30. Under the ADA, there must be an accessible route from accessible parking spaces to the building entrances they serve. 2010 Standards § 206.2.1. If a parking space serves more than one accessible entrance, it must be located on an accessible route to the accessible entrances. 2010 Standards § 208.3.1.

31. Here, there were no accessible routes from the parking spaces designed for persons with disabilities on the property that lead back to Powerstride Battery entrance.

32. Under the 2010 Standards, access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted. 2010 Standards 502.4. “Access aisles are required to be nearly level in all directions to provide a surface for wheelchair transfer to and from vehicles.” 2010 Standards § 502.4 Advisory. No more than a 1:48 slope is permitted. 2010 Standards § 502.4.

33. Here, one of the parking spaces has cross slopes and running slopes that are above 2.1%. This is a violation of the law.

34. Any business that provides parking spaces must provide a sufficient number of handicap parking spaces. 2010 Standards § 208. Under the 2010 Standards, a parking lot with 81 spaces must have 4 accessible spaces. 2010

1 Standards § 208.2 and 1 of them must be van accessible. *Id.* at 208.2.4.

2 35. Here, there was only three parking spaces reserved for persons with  
3 disabilities.

4 36. Under the 2010 Standards, where the approach to the sales or service  
5 counter is a parallel approach, such as in this case, there must be a portion of  
6 the sales counter that is no higher than 36 inches above the floor and 36 inches  
7 in width and must extend the same depth as the rest of the sales or service  
8 counter top. 2010 Standards § 904.4 & 904.4.1.

9 37. Here, no such accessible transaction counter has been provided in  
10 violation of the ADA.

11 38. The Safe Harbor provisions of the 2010 Standards are not applicable  
12 here because the conditions challenged in this lawsuit do not comply with the  
13 1991 Standards.

14 39. A public accommodation must maintain in operable working condition  
15 those features of its facilities and equipment that are required to be readily  
16 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

17 40. Here, the failure to ensure that the accessible facilities were available  
18 and ready to be used by the plaintiff is a violation of the law.

19  
20 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
21 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
22 Code § 51-53.)

23 41. Plaintiff repleads and incorporates by reference, as if fully set forth  
24 again herein, the allegations contained in all prior paragraphs of this  
25 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
26 that persons with disabilities are entitled to full and equal accommodations,  
27 advantages, facilities, privileges, or services in all business establishment of  
28 every kind whatsoever within the jurisdiction of the State of California. Cal.

1 Civ. Code § 51(b).

2 42. The Unruh Act provides that a violation of the ADA is a violation of the  
3 Unruh Act. Cal. Civ. Code, § 51(f).

4 43. Defendants' acts and omissions, as herein alleged, have violated the  
5 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's  
6 rights to full and equal use of the accommodations, advantages, facilities,  
7 privileges, or services offered.

8 44. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
9 discomfort or embarrassment for the plaintiff, the defendants are also each  
10 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
11 (c).)

12  
13 **PRAYER:**

14 Wherefore, Plaintiff prays that this Court award damages and provide  
15 relief as follows:

16 1. For injunctive relief, compelling Defendants to comply with the  
17 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
18 plaintiff is not invoking section 55 of the California Civil Code and is not  
19 seeking injunctive relief under the Disabled Persons Act at all.

20 2. Damages under the Unruh Civil Rights Act, which provides for actual  
21 damages and a statutory minimum of \$4,000.

22 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
23 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

24 Dated: December 6, 2018 CENTER FOR DISABILITY ACCESS

25 

26 By: \_\_\_\_\_

27 Chris Carson, Esq.  
28 Attorney for plaintiff